IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 772 OF 2007.

Ninad Marutrao Jadhav. ... Petitioner.
Versus.
Mrs.Swati Ninad Jadhav. ... Respondent.

Shri Sugandh Deshmukh for the Petitioner.

Ms.Anita Bhatiwani i/by Ms.Kokila Kalra for the Respondent.

WITH

WRIT PETITION NO. 1982 OF 2007

Swati Ninad Jadhav. ... Petitioner.
Versus.
Ninad Jadhav. ... Respondent.

Ms.Anita Bhatiwani i/by Ms.Kokila Kalra for the Petitioner.

Shri Sugandh Deshmukh for the Petitioners.

CORAM : ABHAY S.OKA, J.

DATED : 16th April, 2007.

P.C.:

1. On the last date both the petitioners were finally heard. Writ Petition No.772 of 2007 has been filed by the husband for challenging the order of interim maintenance passed in favour of the wife under section 24 of the Hindu Marriage Act, 1955. The wife has filed Writ Petition No.1982 of 2007 for challenging that part of the same order by which the prayer for litigation expenses has been denied to the wife.

2. The husband filed a petition for dissolution of marriage under section 13 of the said Act of 1955. In

the said petition, the wife applied for interim maintenance of Rs.20,000/- per month and for a sum of Rs.25,000/- towards costs of litigation. By the impugned Judgment and order the learned Principal Judge of the Family Court at Pune has fixed the interim maintenance at the rate of Rs.10,000/- per month. However, no order was passed as regards the payment of expenses on account of litigation.

3. The learned Advocate appearing for the husband submitted that both the husband and wife are residing under the same roof in the premises of the husband. He submitted that all the amenities in the matrimonial home are being enjoyed by the wife. He submitted that in the reply filed by the husband, it is pointed out that whenever the wife needs money, the husband has paid the same. He submitted that considering the fact that the parties are residing under the same roof, the interim maintenance at the rate of Rs.10,000/- per month is excessive. He submitted that in fact no such order could have been passed. The learned Advocate for the wife supported the impugned order in so far as the grant of maintenance is concerned and submitted that considering the income of the husband, the fixed amount is on the lower side. It was submitted that there was no reason recorded by the learned Principal Judge for denying litigation expenses.

4. I have considered the submissions. Considering the exigencies of the life in the city like Pune notwithstanding the matrimonial dispute, the husband and wife are forced to reside under the same roof. The allegation of the wife is that the husband is earning Rs.70,000/- per month. In reply filed by the husband, he has stated that he is getting only a sum of Rs.47,000/- in his hand. Considering the admitted income of the husband, in fact in normal course the trial Court could have been justified in granting an amount higher than Rs.10,000/- per month. However, the trial Court was conscious of the fact that the parties are residing under the same roof provided by the husband and therefore, the wife is using certain amenities in the residential premises of the husband. Therefore, the learned trial Judge has fixed the amount on a lower side. Even going by the case made out by the Petitioner as regards his income, it is impossible to say that the interim maintenance of Rs.10,000/- per month fixed by the learned Principal Judge is not reasonable. I find no reason to interfere with the said order.

5. Though a specific prayer was made in the Application at Exh.24 for grant of expenses on account of litigation, the learned Principal Judge has not granted that relief to the wife. There is no reason

assigned for the said relief not being granted to the wife. In my view, the learned trial Judge ought to have granted a sum of Rs.10,000/- by way of litigation expenses to the wife.

6. Hence the following order is passed:

(i) Writ Petition No.772 of 2007 is rejected.

(ii) Writ Petition No.1982 of 2007 is partly allowed. The order dated 8th December 2006 passed below Exh.24 is modified. In addition to interim maintenance granted to the wife, the husband is directed to pay a sum of Rs.10,000/- to the wife being the expenxses of litigation within a period of six weeks from today.

(iii) There will be no order as to costs.

(iv) Hearing of the Petition for divorce is expedited.

(v) The parties to act on an authenticated copy of this order.

Judge.